

ADMINISTRATIVE APPEALS

PREPARED BY
STATE PERSONNEL BOARD
APPEALS DIVISION

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SECTION I

GENERAL OVERVIEW

Introduction

This booklet provides a general overview of the various appeals that are heard by the State Personnel Board (SPB or Board). The SPB is a neutral body responsible for administering a merit system of civil service employment within California State government. The SPB's authority to enforce the civil service statutes is set forth in Article VII, section 3 of the California Constitution. As part of its responsibility, the SPB has established administrative procedures to resolve appeals of alleged violations of civil service laws and rules.

The requirements and procedures for filing appeals with the SPB, including the time deadlines for filing such appeals, are set forth in the civil service laws and SPB's administrative regulations (rules). Copies of these laws and rules are available for review in departmental personnel offices, union offices, on SPB's website (www.spb.ca.gov) and at SPB's offices.¹ This booklet is a summary reference document and does not supersede existing civil service laws or rules.²

Employees may be able to resolve their disputes informally with their departments without having to file an appeal with the SPB. Employees are, therefore, encouraged to talk to their departments and/or union representatives before filing an appeal with the SPB.

As this booklet was being written, revised regulations that could affect the various appeals and processes in this booklet were being developed. If those regulations are adopted at a future date, this booklet will be revised to reflect any change in substance or process.

Appeals Under SPB Jurisdiction

The following actions may be appealed to and/or heard by the SPB:

- Adverse Action
- Rejection During Probationary Period
- Medical Termination/Demotion /Transfer
- Constructive Medical Termination
- Nonpunitive Termination/Demotion/Transfer (License Registration / Revocation)
- Termination of Limited Term/Seasonal/Temporary Authorization (TAU)
Appointment (Liberty Interest/Name-Clearing Hearing)
- Termination of Limited Examination and Appointment Program (LEAP)
Appointment
- Termination of Career Executive Assignment (CEA) Appointment
- Termination/Automatic Resignation of Permanent Intermittent Employees
- California State University (CSU) Appeals

¹ SPB rules are located in Title 2, California Code of Regulations, Sections 1 – 549.74

² This booklet is not intended to provide legal advice. If an employee or applicant has any legal questions, he or she should seek legal advice from his or her union representative or legal counsel.

- Appeals from Counties Without Approved Merit Systems
- Discrimination Complaint
- Request to File Charges
- Examination Appeal
- Denial of Request for Reasonable Accommodation
- Request to Test - Dismissed Employee
- Whistleblower/Retaliation Complaint
- Merit Issue Complaint
- Withhold from Certification
- Voided Appointment
- Pre-Employment Medical/Psychological Disqualification
- Failure of Pre-Employment Drug Test
- Out-of-Class Claim (Examination)
- Petition for Rehearing

Filing an Appeal

Most of the above listed appeals may be filed directly with the SPB Appeals Division. Some complaints must be filed with the department first; if unresolved, an appeal may then be filed with the SPB Appeals Division. Information about each type of appeal is available by calling the Appeals Division at (916) 653-0544 or by accessing the Internet at www.spb.ca.gov.

State employees and applicants may also file discrimination complaints with the State Department of Fair Employment and Housing (DFEH), Department of Labor (DOL), and the federal Equal Employment Opportunity Commission (EEOC). Contact DFEH, DOL and EEOC for applicable timeframes and procedures.

SPB rule 51.2 requires that all appeals be in writing. The appeal must clearly identify the facts that form the basis for appeal, all known parties, and specify the remedy or relief requested. Currently, there is no specific form or document on which appeals must be submitted; however, many labor unions that represent state employees have forms that can be utilized for this purpose. To assist the SPB in timely processing your appeal, please be sure to include your social security number, home address and a telephone number where you can be reached.

Appeals within SPB's jurisdiction must be mailed, personally delivered or sent by facsimile transmission (fax) to:

State Personnel Board
Appeals Division
801 Capitol Mall, MS #22
P. O Box 944201
Sacramento, CA 94244-2010
FAX (916) 654-6055

Telephone inquiries regarding appeals should be made to the SPB Appeals Division at the following numbers:

General Information:

Sacramento	(916) 653-0544/653-0799
Los Angeles	(213) 897-3370
Status of Appeals	(916) 657-2092
Calendaring & Continuances	(916) 653-5505
Transcripts, Tapes, Documents and Administrative Record Requests	(916) 657-2489
Secretariat	(916) 653-0429
FAX Line	(916) 654-6055
TDD ³	(916) 654-2360
Interpreters	(800) 653-5505

When to File

Appeals must be filed with the SPB within the timeframes specified by statute or rule. (See "Appendix A" for filing periods by type of appeal). If an appeal is not filed within the timeframes set forth in the statute or rule, it may be dismissed.

SPB Appeals Process

Depending on the type of appeal, an appeal filed with the SPB may be sent to an evidentiary hearing before an ALJ, a less formal non-evidentiary hearing before a staff hearing officer, or an investigation by Board staff with or without a hearing. For most appeals, the SPB has six months from the filing of an appeal or 90 days from its submission, whichever is less, to decide the case. The SPB may extend this period by 45 days. Every effort is made to comply with these time limits.

SPB hearings are open to the public. A party may be represented by legal counsel or any other person or organization, or may represent him/herself.

³ TDD is a Telecommunications Device for the Deaf and can only be reached from telephones equipped with such a device.

Remedies

The SPB has broad remedial authority when it grants an appeal. Depending upon the type of appeal, remedies may include: reinstatement; back salary, benefits and interest at 7%; change in work assignment and/or location; or assignment of an alternative or passing score on an examination. The SPB may also grant compensatory damages in discrimination appeals. At present, there is no specific authority for the SPB to award attorneys' fees or civil sanctions for contempt.

Expungement Of Notices Of Adverse Action From Official Personnel Files

Government Code section 19589 requires appointing powers to remove Letters of Reprimand from an employee's official personnel file within three years of the effective date of the reprimand; however, the appointing power may maintain a copy of the Letter of Reprimand in a separate file, such as a legal file or a supervisory file, and cite to the Letter of Reprimand in subsequent disciplinary actions for purposes of establishing notice and/or progressive discipline. There is no other statutory or regulatory authority governing the removal of notices of adverse action from an employee's official personnel file.

While Section 19589 is the only statute governing the removal of notices of adverse action from an employee's official personnel file, the retention/expungement of such records may be addressed in a memorandum of understanding negotiated by the employee's bargaining unit. For example, the memorandum of understanding may require the appointing power to remove all notices of adverse action from an employee's official personnel file within two years of the effective date of the notice of adverse action. Similarly, such matters may also be addressed in any settlement agreement entered into between the employee and the appointing power concerning the specific notice of adverse action.

SECTION II

STATE CIVIL SERVICE
EVIDENTIARY APPEALS

Action: Adverse Action/Disciplinary Action

Authority: Government Code sections 18670 - 18683 and 19570 - 19593;
SPB rules 51 - 52.5

Filing Deadline: 30 Days after Effective Date

Adverse actions are formal disciplinary measures taken against state civil service employees. They include dismissals, suspensions, demotions, reductions in salary, disciplinary transfers and formal/official reprimands. An employee may be disciplined under any of the twenty-four legal causes for discipline as set forth in Government Code section 19572 (See "Appendix B").

When a department takes adverse action against an employee, it must give the employee at least five working days written notice before the action takes effect and copies of the materials upon which the adverse action is based. When the employee receives the notice of the proposed adverse action, he/she has the right to respond verbally or in writing to the department regarding the charges prior to their effective date. An informal Skelly meeting is generally held at which the employee may present his or her response to the proposed adverse action. After the Skelly meeting, the department may continue with, modify or withdraw the proposed adverse action. If the proposed adverse action is not withdrawn as a result of the Skelly meeting, the state civil service employee may file an appeal with the SPB Appeals Division within 30-calendar days⁴ after the effective date of the adverse action. (SPB uses the postmark date as the filing date.)

SPB will schedule the adverse action appeal for an evidentiary hearing before an ALJ. During that hearing, the department has the burden of proving the charges by a preponderance of the evidence (i.e., the department must show that it is more likely than not that the alleged misconduct occurred)⁵; the employee has the burden of proving any affirmative defenses he or she may raise. The ALJ will review the evidence that is presented to determine whether: (1) the department proved the factual acts or omissions it alleged in the notice of adverse action; (2) if so, whether those acts or omissions constitute legal cause for discipline; and (3) whether the penalty that the department imposed is just and proper for the proven misconduct.

The ALJ will prepare a proposed decision based upon the evidentiary record. That proposed decision may sustain the action, modify the penalty, revoke the action, and/or restore the employee to the position and/or employment list. The proposed decision will be reviewed by the five-member Board at one of its bi-monthly meetings. The Board may adopt the proposed decision, modify (lower) the penalty, reject the decision, and/or remand the decision to the ALJ for further findings. If the Board rejects the proposed decision, the parties will be given an opportunity to purchase the transcript, file written argument and present oral argument to the Board at a public meeting. The Board will then issue its own decision in the case. The Board may designate the decision as precedential if it contains a significant legal or policy determination of general application that is likely to recur.

⁴ All days are calendar days unless otherwise specified.

⁵ If the employee is managerial, he/she bears the burden of proof to set aside the action based on fraud, bad faith, or lack of substantial evidence, and the statement of reasons (facts) set forth in the notice of adverse action is presumed true. (Government Code sections 19590-19593).

Action: Lesser Adverse Action Appeals

Authority: Government Code Sections 18670-18683, 19576; and California Code of Regulations (CCR) 52 and 52.6

Filing Deadline: 30 Days after Effective Date

Pursuant to Board Rules 52 and 52.6, appeals filed by non-represented employees in adverse actions where the penalty imposed is an official reprimand, a suspension without pay for five days or less, or a one-step reduction in pay for four months or less are adjudicated through SPB's investigatory hearing process.

These lesser adverse action hearings are limited to three hours with each party receiving 90 minutes to present its case to the ALJ. The formal rules of evidence and procedures do not apply; sworn hearsay declarations are admissible and can support factual findings. Appeals are decided within 90 days from when the appeal file is opened. The ALJ will submit a short-form proposed decision to the Board within 15 days after the hearing. The Board will review that proposed decision in the same manner as it reviews proposed decisions in other adverse actions.

Action: Rejection During Probationary Period

Authority: Government Code sections 18670 - 18683 and 19170 - 19180; SPB rules 51 - 52.5 and 321 - 327; DPA rule 599.795

Filing Deadline: 15 Days after Effective Date

A department may reject an employee during the probationary period for reasons relating to the probationer's qualifications; the good of the service; and/or failure to demonstrate merit, efficiency, fitness, and moral responsibility. The department must give the employee written notice of rejection at least five working days before its effective date and copies of the materials upon which the rejection is based. The notice of rejection must be served prior to the conclusion of the probationary period, but the probationary period may be extended to allow for the 5 working days' notice required by the Skelly rule. The employee may appeal the rejection to the SPB Appeals Division within 15 days from its effective date.

Rejections during probation are part of the selection and examination process within the State civil service system. They are not considered to be discipline or adverse actions. The employee's appeal from rejection during probation will be heard by an SPB ALJ in an evidentiary hearing. During the hearing, the facts set forth in the notice of rejection will be presumed to be true and the employee will bear the burden of either disproving the allegations and/or proving that the rejection was based on fraud, discrimination, or bad faith.

After reviewing all the evidence that is presented during the hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board in the same manner as it reviews proposed decisions in adverse action appeals.

Action: Medical Termination/Demotion/ Transfer

Authority: Government Code sections 18670 - 18683 and 19253.5; SPB rules 51 - 52.5 and 446

Filing Deadline: 15 Days/after Receipt by the Employee

A department may require an employee to submit to a medical examination known as a “fitness for duty” (FFD) evaluation to evaluate his/her ability to perform the job. If the results of the FFD show that an employee is unable to perform the duties of his/her present position, the employee may be medically demoted or transferred to another position within the department. If the employee is not able to perform the duties of *any* position within the department, and the employee is not eligible for or waives disability retirement, the department may medically terminate the employee.⁶

The department must give written notice of the medical action and the reasons for it at least 15 days before its effective date. The employee may appeal this medical action to the SPB Appeals Division within 15 days after receipt of written notice of the medical action. The medical action will be heard by an ALJ in an evidentiary hearing. During the hearing, the department must show by a preponderance of the evidence that it properly took the medical action.

After reviewing all the evidence presented during the hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board during one of its regularly scheduled bi-monthly Board meetings.

⁶ If the employee is eligible for and does not waive disability retirement, the department cannot medically terminate the employee. Instead, the department may file with the Public Employees’ Retirement System (PERS) for disability retirement on the employee’s behalf.

Action: Constructive Medical Termination

Authority: Government Code sections 18670 - 18683 and 19253.5

Filing Deadline: 30 days After the Constructive Medical Termination Occurs

If a department, for asserted medical reasons, refuses to allow an employee to work, but has not served the employee with a formal notice of medical termination, the employee may challenge the department's actions by filing a constructive medical termination appeal with the SPB. For example, an employee may file a constructive medical termination appeal when a department refuses to reinstate the employee to his or her position after PERS has denied an application for disability retirement or after the employee's treating physician has released the employee for duty.

An appeal from constructive medical termination must be filed with the SPB Appeals Division within 30 days after the acts giving rise to the appeal occurred. The appeal will be heard by an ALJ at an evidentiary hearing. During the hearing, the employee will have the burden of proving by a preponderance of the evidence that he or she was constructively medically terminated. After reviewing all the evidence, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly meetings.

Action: Nonpunitive Termination/Demotion Transfer
(License Revocation/Restriction)

Authority: Government Code sections 18670 - 18683 and 19585; SPB rules 51 - 52.5
and 446

Filing Deadline: 30 Days after Receipt

A department may nonpunitive terminate, demote or transfer an employee who fails to meet a requirement for continuing employment, for example, when an employee driver's or occupational license, certificate, registration, or other professional qualification is revoked or restricted and that license, certificate, registration or qualification is a minimum qualification for the job. A nonpunitive action is not considered to be discipline or adverse action.

The department must provide written notice to the employee at least five days before the non-punitive termination, demotion, or transfer. Within 30 days after receipt of the notice, the employee may file an appeal with the SPB Appeals Division. The employee's appeal will be heard by a ALJ at an evidentiary hearing. During the evidentiary hearing, the department will have the burden of proving that the employee failed to meet a requirement for continuing employment, and the employee will have the burden of proving that the nonpunitive termination was improper.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly Board meetings.

If the Board sustains a nonpunitive termination, when the employee again meets the requirements for employment, the employee may apply for reinstatement with the department. Reinstatement by the department is permissive, and not mandatory.

Action: Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest / Name-Clearing Hearing)

Authority: California Constitution, Article VII, section 5; Government Code sections 18670 - 18683 and 19058 - 19101; SPB rules 51 - 52.5, 265, 281, and 282

Filing Deadline: 30 Days after Receipt

If a department terminates an employee's limited term, seasonal or temporary authorization appointment "with fault" or "with cause" for allegedly wrongful behavior that might stigmatize the employee's reputation, seriously impair the employee's opportunity to earn a living, or seriously damage the employee's standing in the community, the employee has a right to a limited name-clearing hearing. The sole purpose of the name-clearing hearing is to give the employee an opportunity to rebut the charges and remove the stigma; reinstatement and back salary are not available as remedies. The name-clearing hearing may be conducted by the employee's department. If the employee's department does not offer the employee a name-clearing hearing, the employee may file an appeal with the Board to obtain such a hearing. The appeal must be filed within 30 days after the employee receives notice of the termination of the appointment.

The name-clearing hearing will be conducted by an ALJ. During the hearing, the employee bears the burden of proving that the "with fault" or "with cause" designation is improper. After reviewing all the evidence that is presented at the hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board during one of its regularly scheduled Board meetings.

If the Board decides in favor of the employee, the "with fault" or "with cause" designation will be removed, but the termination of the employee's appointment will remain in effect.

An employee whose limited term, seasonal or temporary authorization appointment is either terminated without fault or is terminated with fault for a reason that does not stigmatize the employee is not entitled to a name-clearing hearing before the Board.

Action: Termination of Limited Examination and Appointment Program (LEAP) Appointment

Authority: Government Code sections 18670 - 18683 and 19240 - 19244; SPB rules 51 - 52.5 and 547.50 - 547.57

Filing Deadline: 30 Days after Receipt

An employee appointed under the Limited Examination and Appointment Program (LEAP) may be terminated during the LEAP job examination period for failure to meet conditions for appointment; failure to satisfactorily demonstrate the level of knowledge, skill, and ability required; for other reasons relating to the candidate's qualifications; for the good of the service; or for failure to demonstrate merit, efficiency, fitness, including medical condition, or moral responsibility. A LEAP appointment may also be terminated for the same reasons within 30 days after the exam period ends.

A department must give written notice to the employee at least five working days before the effective date of the termination of a LEAP appointment. When the LEAP employee receives the notice, he/she has a right to respond to the department. If the department does not alter the proposed action after receiving the employee's response, the LEAP candidate may file an appeal with the SPB Appeals Division within 30 days after receipt of the notice of termination. An ALJ will hold a hearing, during which the employee bears the burden of proof, similar to an appeal from rejection during probation.

The ALJ who hears that appeal will prepare a proposed decision, which will be reviewed by the Board during a regularly scheduled Board meeting.

Action: Termination of Career Executive Assignment (CEA) Appointment

Authority: Government Code sections 19889 - 19889.4; SPB rules 548-548.155;
DPA rules 599.990 - 599.995

Filing Deadline: 30 Days after Receipt

Because a Career Executive Assignment (CEA) appointment is to a position requiring a high level of discretion and policy making, an employee who is appointed as a CEA does not obtain permanent status in that appointment; if that CEA appointment is subsequently terminated, the employee's appeal rights are limited. Before serving a written notice of termination, the department must inform the CEA employee of its proposed action and allow him/her the opportunity to discuss the termination. The department must serve the CEA employee with written notice stating the reasons for termination 20 days before its effective date. The department must send a copy of the notice of termination to DPA.

Within 30 days after receipt of the notice of termination, the CEA employee may file an appeal with the SPB Appeals Division on the grounds that the termination was based on age, sex, sexual preference, marital status, race, color, national origin, ancestry, disability, religion, religious opinions and affiliations, and political affiliations or opinions. An ALJ will hold a hearing during which the employee bears the burden of proving that the CEA termination was for prohibited discriminatory or political reasons.

The ALJ will prepare a proposed decision, which will be reviewed by the Board at a regularly scheduled Board meeting.

Action: Termination/Automatic Resignation of Permanent Intermittent Employee

Authority: Government Code sections 19100.5 - 19101, and 19996.1; SPB rule 448; DPA rule 599.828

Filing Deadline: 30 Days after Receipt

A permanent intermittent (PI) employee does not have a defined time base and may only work up to a fixed number of hours per year. A PI who has not worked, has not been called to work, or is not available for work for more than one year is considered to have automatically resigned without fault from his/her position under SPB rule 448; however, the Board has ruled that departments cannot fail to call a PI employee into work for one year and then invoke the automatic resignation provision. Such separations are limited to non-work periods not covered by approved leave, whether with or without pay, or circumstances in which employees are presumed to have abandoned their jobs. Appeals for reinstatement must be filed with the SPB Appeals Division within 30 days of receipt of notice of separation by automatic resignation.

An appeal from a termination of a PI appointment will be heard by an ALJ at an evidentiary hearing. During the hearing before the ALJ, the PI employee bears the burden of proving he or she had a satisfactory reason for being absent, the rules were improperly applied to separate him/her, and he or she is ready, willing and able to resume employment. After reviewing the evidence, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly Board meetings. If the Board decides to revoke the PI employee's termination, the PI may be reinstated to the employment list, but is not entitled to back salary or future scheduling.

Under DPA rule 599.898, a PI employee who waives three requests by the department to report to work is considered to have automatically resigned without fault from his/her position, unless he/she was unable to come to work due to illness or other good reason. Automatic resignations under this rule are heard by DPA, and not SPB. Appeals for reinstatement from automatic resignation under this rule must be filed with DPA within 30 days of notice of separation by automatic resignation.

SECTION III

STATE CIVIL SERVICE
MERIT APPEALS

Action: Discrimination/Retaliation Complaint

Authority: Government Code sections 12940 et seq. (Fair Employment and Housing Act [FEHA]), 18500, 18670 - 18683 and 19700 - 19706; Executive Order B-54-79; SPB rules 51 - 54.2, and 547 - 547.2

Filing Deadline: One year, with 90-days⁷ extension (limited). Must first file complaint with department. Thirty (30) days from department response to file with SPB.

The State of California provides equal employment opportunity (EEO) to all state employees based on merit, efficiency, and fitness; and prohibits illegal discrimination in every aspect of personnel policy and practice in the employment, development, advancement, promotion, and treatment of its employees. It is illegal to discriminate and/or retaliate in state civil service employment based on race, color, sex, age, creed, religion, national origin, ancestry, disability, marital status, sexual orientation, and/or political affiliation. Employment decisions must be based upon job-related criteria. An employee, or applicant for employment, may not be retaliated against for opposing unlawful employment practices, or for making a charge, or for testifying, assisting or participating in an investigation, proceeding, or hearing under the Government Code.

If a State civil service employee/applicant believes he/she has been discriminated against because of any of the above factors, he/she may file a discrimination/retaliation complaint with the department.

If the employee/applicant is dissatisfied with the results of the department's investigation and/or decision, or does not receive a timely response, he/she may file a written appeal with the SPB Appeals Division. The appeal must be filed within 30 days of receipt of the department's response or within 30 days of the exhaustion of the time period specified in the department's process. The appeal must be in writing, clearly identify the facts that form the basis for appeal, identify the parties involved, describe the allegedly discriminatory incident(s), and the date(s) it took place, and explain why the complainant believes that race, age, color, sex, or other protected group status was a factor in the allegedly wrongful discriminatory conduct.

Applicants for State Employment

An applicant for state employment may file an appeal with the SPB Appeals Division if he or she believes that he or she was disqualified from or received a low score on an examination because of illegal discrimination.

An applicant who successfully passed an examination, but was subsequently denied an appointment, may file a discrimination complaint with the department, alleging that the department's decision not to hire was based on illegal discrimination. The complaint should specify the position applied for; the date and location of appointment interview, if one was conducted, and the person responsible for the alleged discriminatory act or decision; and should

⁷ All days are calendar days unless otherwise specified.

describe the evidence that shows that discrimination was a factor in the decision not to hire. An applicant who is not satisfied with the department's response may file an appeal with the SPB Appeals Division within 30 days after the date of receipt of the department's decision.

Direct Filing with SPB

A discrimination/retaliation complaint may be filed directly with the SPB Appeals Division when the remedy requested is outside the authority of the department, or the circumstances directly concern a departmental director or members of the department's executive staff. All direct filings of discrimination/retaliation complaints with SPB are reviewed to determine if SPB jurisdiction exists.

Other Agency Filing

Under federal and state laws and rules, the U.S. Equal Employment Opportunity Commission (EEOC), Department of Labor (DOL) and the Department of Fair Employment and Housing (DFEH) also regulate EEO laws and investigate and render decisions on discrimination/retaliation complaints. A state employee/applicant may file a complaint of discrimination/retaliation with the EEOC, DOL, or DFEH, as well as with the SPB.

For current state employees, discrimination in exams; failure to hire; denial of promotion, transfer, or training; negative job assignments or performance evaluations; and adverse working conditions may also be appealed as grievances under the applicable collective bargaining agreements. Non-represented employees may file grievances concerning these actions under applicable SPB or DPA rules.

SPB Jurisdictional Review

All discrimination/retaliation complaints/appeals that are filed with SPB's Appeals Division are reviewed to determine if SPB has jurisdiction to accept the complaint/appeal. In order to determine whether it has jurisdiction to review an appeal, SPB reviews whether:

- the filing requirements have been met
- the appeal was filed within the applicable time limits
- the appellant is a member of a protected class (i.e., race, color, sex, etc.)
- the appellant has standing to file (i.e., the appellant alleges direct harm/injury from discrimination)
- the appellant has stated a prima facie case (i.e., enough information demonstrating protected status may have been a factor in the direct harm/injury)

All discrimination complaints/appeals found to be within SPB jurisdiction that are not resolved by SPB staff through an investigative process are referred to an evidentiary hearing before an ALJ for decision. In such hearings, the employee/applicant bears the burden of proving discrimination.

A discrimination complaint may also be consolidated with a pending adverse action, rejection during probation, or medical action involving the same parties. An employee may also allege discrimination or retaliation as an affirmative defense during an evidentiary hearing in an adverse action, rejection during probation or medical action appeal.

Proposed decisions in discrimination/retaliation complaints are reviewed by the Board at regularly scheduled Board meetings.

Action:	Denial of Reasonable Accommodation
Authority:	Americans with Disabilities Act (ADA) (42 USC Section 12101 et. seq.); Fair Employment and Housing Act (FEHA) (Government Code sections 12940 et. seq.); Government Code Sections 18670 - 18683, 19230 - 19237 and 19700 - 19706; SPB rules 10 and 51-54.2
Filing Deadline:	Must file request with department. May file with SPB within 30 days after department response.

State and federal laws require a state civil service employer to remove artificial barriers and provide reasonable accommodation to facilitate employment of a qualified individual with a disability. Reasonable accommodation is a reasonable adjustment to the work environment that enables a qualified individual to successfully perform the essential duties of the position.

An applicant or employee who requires reasonable accommodation must first file a written request with the department. An employee may also request reasonable accommodation from his/her immediate supervisor. These sources may provide additional information regarding the departmental policy, procedure, and process for obtaining reasonable accommodation.

Departments must respond to requests for reasonable accommodation within 20 working days from the date of the request. If the department denies the request, the denial must be in writing and include a statement describing the employee/applicant's appeal rights to the SPB. If the department does not respond to the request within 20 working days, the employee/applicant may appeal directly to the SPB Appeals Division.

Departments must respond in writing to a request for reasonable accommodation in a civil service examination within 10 working days; and include in the response a statement of reasons for the denial.

Appeals from denial/failure to respond to request for reasonable accommodation must be filed with the SPB Appeals Division within 30 days after receipt of the department's denial of reasonable accommodation or exhaustion of the department's 20-working days response period. The appeal must explain the nature of the appeal, describe why the employee/applicant disagrees with the department's denial of the employee/applicant's request for reasonable accommodation, and provide other relevant information to support the employee/applicant's request for reasonable accommodation. All appeals from denial of reasonable accommodation are investigated to determine if SPB jurisdiction exists.

Reasonable accommodation appeals that are not resolved by investigation and/or written determination are referred to an evidentiary hearing before an ALJ.

A reasonable accommodation appeal may be consolidated with a pending adverse action, medical action or rejection during probation appeal involving the same parties. Denial of reasonable accommodation may also be raised as an affirmative defense during an evidentiary hearing before an ALJ in an adverse action, medical action or rejection during probation appeal.

The employee/applicant bears the burden of proving that the department should have granted the request for reasonable accommodation.

After reviewing all the evidence that is presented during the hearing, the ALJ will prepare a proposed decision, that will be reviewed by the Board at a regularly scheduled Board meeting.

Action: Whistleblower Retaliation Complaint

Authority: Government Code sections 995.3, 8546.8, 8547 - 8547.11, 18670-18673, 18935 and 19683-19683.5; Code of Civil Procedure section 2015.5; Penal Code Sections 289.6 and 6129; SPB rules 51-54.2

Filing Deadline: Within 12 months of latest reprisal/retaliation

It is illegal for state officers and employees to retaliate against a state civil service employee or applicant for state civil service appointment for reporting improper governmental activity or for refusing to obey an illegal order. If an employee/applicant has been subject to retaliation because he/she has made a protected disclosure and/or refused to obey an illegal order, he/she may file a complaint of whistleblower retaliation with the SPB.

Retaliation complaints must be filed with the SPB Appeals Division within 12 months from the most recent act of reprisal. A complaint of retaliation must be accompanied by a written sworn statement. The complaint must describe the specific retaliatory act(s); the date(s) of the act(s); and the reason the complainant believes that the act(s) occurred in retaliation for the complainant's having made a protected disclosure or having refused to obey an illegal order. The complaint should also state either when the protected disclosure was made, or when and who issued the illegal order.

All whistleblower retaliation complaints are reviewed to determine if SPB jurisdiction exists. Whistleblower retaliation complaints are reviewed in accordance with the procedures set forth in Government Code section 19683. A whistleblower retaliation complaint may be consolidated with another appeal pending before the Board between the same parties, including an adverse action, medical action or rejection during probation. An appellant may also raise whistleblower retaliation as an affirmative defense during an evidentiary hearing in an adverse action, medical action or rejection during probation appeal.

If the whistleblower retaliation complaint is not consolidated with another pending action, SPB staff will conduct an investigation into the allegations. After the investigation is completed, the Board's Executive Officer will issue a Notice of Findings. If the Notice of Findings concludes that the appointing power, supervisor or manager engaged in illegal whistleblower retaliation, the appointing power, supervisor or manager may appeal the Executive Officer's findings and obtain an evidentiary hearing before an ALJ. During that hearing, the employee/applicant will bear the burden of establishing, by a preponderance of the evidence, that making protected disclosures and/or refusing to obey an illegal order was a "contributing factor" in the department's adverse employment action against the employee/applicant. If he/she meets that burden, the burden will then shift to the employer to establish by "clear and convincing evidence" that it did not retaliate against the applicant or employee and that the adverse employment action occurred for legitimate, independent reasons.

If a whistleblower retaliation appeal is heard by an ALJ, the ALJ will prepare a proposed decision that will be reviewed by the Board at a regularly scheduled Board meeting.

Action: Request to File Charges

Authority: Government Code sections 18670 - 18683 and 19583.5; Code of Civil Procedure section 2015.5; SPB rules 51 - 54.2

Filing Deadline: Within One Year of Events Giving Rise to Request

An individual may file a request to file charges seeking adverse action against a State civil service employee for one or more of the causes for discipline set forth in Government Code section 19572.⁸ Charges filed by a State employee shall not include issues covered by the State's employee grievance or other merit appeal processes until those appeal processes have been exhausted. The written request must contain a statement of proposed charges and a sworn statement, and may be accompanied by sworn declarations based on personal knowledge. The request must describe the charges in sufficient factual detail to allow for an investigation and to enable the accused employee(s) to prepare a defense. The request must be filed with the SPB Appeals Division within one year of the actions alleged to warrant discipline.

All requests to file charges are investigated to determine if SPB jurisdiction exists. SPB will provide copies of the request to the relevant department and the person against whom the charges are alleged and ask for responses to the request in writing.

SPB staff will investigate and will make a recommendation to the Board as to whether the request should be granted or denied. The staff recommendation will be reviewed by the Board at a regularly scheduled Board meeting.

If the Board grants a request to file charges, the employee who is charged will be allowed to answer. The matter will be assigned to an ALJ, who will conduct an evidentiary hearing. The person/entity initiating the request bears the burden of proving, by a preponderance of the evidence, the factual allegations, legal causes, and penalty. At the conclusion of the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at a regularly scheduled Board meeting.

⁸ The law does not permit the filing of request to file charges by current wards or inmates of the California Youth Authority or the Department of Corrections.

Action: Examination Appeals (Individual, Group, Career Executive Assignment [CEA] and LEAP)

Authority: California Constitution, Article VII, section 1(b); Government Code sections 18670 - 18683, 18900, 18930.5, 18952, and 19244 (LEAP); SPB rules 51 - 54.2, 190 - 210, and 548.30 - 548.52

Filing Deadline: 30 days/60 days - Written Test

When a competitor is notified that his/her civil service examination application is not accepted or a competitor contends that laws and/or rules were violated in an examination, the competitor may file an appeal with the SPB Appeals Division.

There are four grounds for which an appeal will be accepted. Each requires supporting facts and evidence (excluding CEA and LEAP examinations). These grounds are: fraud; discrimination; erroneous interpretation or application of minimum qualifications (MQs); or a significant irregularity in the examination process. These reasons are further described below.

The appeal must be in writing and state the facts, information, or circumstances upon which the appeal is based. A copy of the notice of examination results should be included with the appeal. The appeal must contain the appellant's name, mailing address, and telephone number where the appellant can be reached or a message can be left. If a copy of the examination results is not included, the appeal must specify the title of the exam, the date of the exam, and the name of the department conducting the exam. Appeals from qualification appraisal interviews must be filed within 30 days of the date of notification. Appeals from written examinations must be filed within 60 days of notification.

Discrimination

Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination based on race, gender, color, religion, national origin, physical or mental disability, age, political affiliation, ancestry, marital status, sexual orientation, or political or religious opinion. The appeal must establish a connection between the complained of activity and the individual's status as a member of a protected class.

Appeals alleging discrimination based on reasons other than the individual status as a member of a protected class (such as alleged discrimination based on geographical location or work unit) will not be accepted.

Fraud

In order to establish a cause of action for fraud, the competitor usually must show: 1) misrepresentation (false representation, concealment, or non-disclosure); 2) knowledge of falsity; 3) intent to defraud (i.e., to reduce reliance); 4) justifiable reliance and 5) resulting injury.

The SPB does not accept exam appeals based solely on an appellant's belief that a competitor cheated in the examination. If cheating does occur, it should be brought to the attention of the testing department or the SPB Examination Unit. The names of persons found to have cheated may be removed from the certification list by the SPB Personnel Resources and Innovation Division.

Erroneous Interpretation or Application of Minimum Qualifications

If an appeal is filed based on the rejection of an application due to the appellant not meeting the minimum qualifications of a classification, then the appellant must state why he/she believes his/her experience, and/or education meet the minimum qualifications. If the appellant does possess the minimum qualifications, he or she will be placed into the examination. The appellant must show that he or she meets all the minimum qualifications; it is not sufficient for the appellant to show that he or she has the general qualifications and/or ability to perform the duties of the class.

The SPB will consider "erroneous interpretation or application of minimum qualifications" to have occurred when there is an inaccurate analysis of the appellant's qualifications to compete in the examination and, as a result, an otherwise qualified applicant is not permitted to compete. Once an appellant is admitted to the examination, he/she must then compete with the other candidates in order to obtain a place on the eligible list.

The minimum qualifications are legal requirements that must be met by all job applicants before they are allowed to compete in State civil service examinations for the class. The Appeals Division staff is not empowered to change or modify these requirements.

Appeals involving the performance of out-of-class experience must be documented in accordance with SPB Rule 212. A presumption is made that a person in a class is performing at least the minimum duties and responsibilities of the class as outlined in the specification. The Board will not consider any other duties not assigned to the classification unless the appellant produces a properly authorized Training and Development (T&D) assignment as established under SPB rules, or a valid out-of-class certification by the proper authority within the department.

Significant Irregularity

Examinations for the establishment of an eligible list must be competitive and administered fairly to test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class being examined. Departments have considerable flexibility in the methods by which an examination may be conducted. As such, there are a variety of examination tools currently being used including, but not limited to: Written, Promotional Readiness Evaluation, Work Sample, Supplemental Application, Performance-Structured Interview, Internet Based, Low-fidelity Simulations, Oral Interview, and In-basket Exercises.

A significant irregularity occurs when the examination is not administered in accordance with the examination plan outlined on the bulletin or the examination method was not applied fairly to all competitors.

Remedies

Appellants who are successful in the examination appeals process typically are granted one of the following remedies: entry into the examination; re-administration of the examination; or an “alternate score” (interview panel assigns alternate scores only when a candidate is eliminated from the examination for not meeting the minimum qualifications).

Group Examination Appeals

This is an appeal filed by one or more competitors and, if the charges are found to be valid, the entire eligible list may be impacted. In such cases, the Board will consolidate the appeals and address the relevant issues. The mere fact that a large number of filers has appealed an examination does not, in itself, constitute a group appeal.

Copy of Interview Tape and/or Disqualification-rating Sheet

Competitors may obtain a copy of their interview tape and/or disqualification rating sheet from the department conducting the examination.

Career Executive Assignment (CEA) Examination Appeals

Within 30 days after the "Report of Appointment to a CEA Position" is submitted to the executive officer, an employee who is otherwise eligible for appointment to the CEA category may appeal to the Board on the grounds of irregularity, fraud or discrimination in the conduct of the examination.

If, upon review of the record of the examination, the Board finds fraud or discrimination, it may cancel the examination and appointment and require the appointing power to repeat the competition. The Board may also order appropriate corrective action as a remedy.

If the Board finds irregularity in the conduct of the examination, the Board may cancel the appointment and/or order a new examination only if it is determined that the irregularity materially affected the appointment made as result of the examination. Appeals based on a challenge of the qualifications of the person appointed as result of an examination usually will be heard only upon the grounds that such person was not well qualified, and/or was not carefully selected.

Limited Examination and Appointment Program (LEAP) Examination

Applicants for, and candidates in, the LEAP examination process may appeal, in accordance with Board rule, any of the following actions: 1) a rejection of an application to participate in an examination; 2) a disqualification by an interview panel or by any other selection method use; or 3) a denial of a request for reasonable accommodation during the job examination period.

Action: Withhold from Certification

Authority: Government Code sections 18670 - 18683 and 18935; SPB rules 51 - 54.2, 172, 211 and 213.6

Filing Deadline: 30 days

If an applicant receives a passing score on a civil service examination, but is subsequently notified that his/her name is being "withheld" from the employment list, he/she may appeal the action to the SPB Appeals Division. The appeal must specify the employment list from which the name is withheld; the date notified of the action; the basis stated by the department for withholding the name; and the applicant's responses or rebuttal to the reason(s) stated by the department for taking the withhold action. Withhold appeals must be filed within 30 days of receipt of notice that the name was withheld.

All withhold appeals are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Appellants must submit a written response to departmental information to the SPB Appeals Division within 21 days after receipt of the departmental file. If the information is not submitted, the appeal is dismissed. Most appeals are resolved through investigation and/or written determination. A non-evidentiary hearing may be scheduled in a limited number of cases if the facts warrant it.

Following an investigation and/or written determination, and/or a staff hearing officer non-evidentiary hearing, memos with findings and a recommendation are prepared and reviewed by the Board.

Action: Voided Appointment

Authority: Government Code sections 18670 - 18683, 19257 and 19267.5; SPB rules 8, 9, 51 - 54.2 and 266 - 266.3

Filing Deadline: 30 days

An individual's appointment to a position in a civil service job classification may be voided because of fraud or irregularity in the appointment process, such as appointment from an expired employment list, or because minimum qualifications for the job are not met. If an individual is notified that his/her appointment has been voided, he/she may file an appeal with the SPB Appeals Division within 30 days of notice of the voided appointment.

All appeals of voided appointments are investigated to determine if SPB jurisdiction has been established and if sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to a non-evidentiary hearing before a staff hearing officer.

Following staff hearing officer non-evidentiary hearings, memos with findings and a recommendation are prepared and reviewed by the Board.

Action: Medical/Psychological Disqualification; Failure of Pre-employment Drug Test

Authority: Americans with Disabilities Act (ADA); Government Code sections 1031(f), 18670 - 18683; SPB rules 51 - 54.2, 172.1 - 173, and 213- 213.6

Filing Deadline: 30 days

If an applicant or employee is medically disqualified or qualified with medical restrictions (e.g., may not climb ladders, lift more than 50 lbs., etc.) and disagrees with the medical evaluation, he/she may file an appeal with the SPB Appeals Division. The appeal must state the job classification from which he/she was medically disqualified or restricted and the basis for disagreement with the medical decision, such as conflicting or supplemental information from another physician indicating that the individual can perform the job duties; stable work history information; and/or participation in physical fitness or activities programs indicating the medical condition has not affected the person's ability to perform in similar work or life activities.

If the applicant or employee is disqualified from a law enforcement class for psychological reasons, he/she may appeal the disqualification. The individual has a right to a state-paid second opinion from a medical expert, and the right to obtain an independent opinion at his/her own expense before the hearing.

If the applicant fails a pre-employment drug test, the appeal is limited to the following grounds: the drug was obtained legally; there was a violation of the test protocol or chain-of-custody procedures; or there was another irregularity that invalidates the test results.

Appeals must be filed with the SPB Appeals Division within 30 days of receipt of the notice of disqualification, restriction or failure of the drug test.

All appeals from medical/psychological disqualification or restriction and from failure of the pre-employment drug test are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to a non-evidentiary hearing before a staff-hearing officer.

Following staff hearing officer non-evidentiary hearings, memos with findings and a recommendation are prepared and reviewed by the Board.

Action: Merit Issue Complaint

Authority: Government Code sections 18670 - 18683; SPB rule 51 - 54.2, 548.61

Filing Deadline: Must file with Department; 30 days after Department Response, File with SPB

SPB laws and rules require that appointments and promotions within the State civil service be made on the basis of merit. Merit issue complaints include, but are not necessarily limited to, interference with promotional opportunities; disputes regarding the effective dates of appointments or promotions; and applicability of alternate salary ranges. The appeal must be filed with the department responsible for the alleged act or decision, and its personnel office may be contacted regarding the time for filing a merit issue complaint and levels of review.

Departments must respond to merit issue complaints within 90 days. An applicant or employee may appeal to the SPB Appeals Division within 30 days after (1) the department denies the complaint or (2) the 90 days expires without a department's decision on the complaint.

All merit issue complaints are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to a non-evidentiary hearing before a staff hearing officer.

Following staff hearing officer non-evidentiary hearings, memos with findings and a recommendation are prepared and reviewed by the Board.

Action: Dismissed Employee's Request to Take Civil Service Examination

Authority: Government Code sections 18670 - 18683 and 18935; SPB rules 51 - 54.2 and 211

Filing Deadline: 30 Days

An employee dismissed from the State civil service is not permitted to take any state examination or be certified to any position in the state service without the consent of the SPB Executive Officer as stated in SPB rule 211 (See "Appendix F"). If the SPB Executive Officer refuses to consent, the dismissed employee may appeal to the SPB Appeals Division within 30 days of notice of denial of permission for certification or to test.

All requests to test, or for certification, are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to a non-evidentiary hearing before a staff hearing officer.

Following staff hearing officer Non-evidentiary hearings, memos with findings and a recommendation are prepared and reviewed by the Board.

Action: Out-of-Class Claim (Examination)

Authority: Government Code sections 18670 - 18683; SPB Rules 51 - 54.2 and 212

Filing Deadline: 30 days

SPB Rule 212 specifies procedures for approval of out-of-class work experience to meet the minimum qualifications for a civil service examination. The department's denial of such a request may be appealed to the SPB Appeals Division within 30 days of receipt of notice of the denial.

All requests to use out-of-class experience in a civil service exam are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to a non-evidentiary hearing before a staff hearing officer.

Following staff hearing officer non-evidentiary hearings, memos with findings and a recommendation are prepared and reviewed by the Board.

SECTION IV

CALIFORNIA STATE UNIVERSITY (CSU) APPEALS

Action: Dismissal, Demotion, Suspension, Medical Action

Authority: Education Code sections 89535 - 89540

Filing Deadline: 30 Days after Service

Discipline by dismissal, demotion or suspension may be taken against employees of the California State University (CSU). Education Code section 89535 sets forth nine legal causes for discipline of CSU employees (See "Appendix D"). Under the Education Code, a CSU employee who is physically or mentally unfit for his/her position may be suspended, demoted or dismissed under the same procedures used for disciplinary actions.

Notices of dismissal, demotion, or suspension for cause of a CSU employee, including a lack of physical and mental fitness, must be in writing, signed by the Chancellor or his designee, and served on the employee. The CSU employee must file an appeal with the SPB Appeals Division within 20 days⁹ of service.¹⁰ The appeal may claim that the required procedure was not followed; there is no grounds for the action; the penalty is excessive, unreasonable, or discriminatory; the employee did not do the acts or omissions alleged, and/or that the acts or omissions were justified.

The hearing follows the same procedures as in state civil service appeals. Proposed decisions are reviewed by the Board as in appeals from adverse action.

⁹ All days are calendar days unless otherwise specified.

¹⁰ CSU employees may also appeal the medical action to DFEH as discriminatory.

Action: Request for Reinstatement After Automatic Resignation as Absent Without Leave (AWOL) / AWOL Separation

Authority: Education Code section 89541

Filing Deadline: 15 Days/90 Days after Service/Effective Date

A CSU employee who is voluntarily or involuntarily absent without leave (AWOL) for five consecutive working days is considered to have automatically resigned from service as of the last day he/she worked. When the CSU employee receives notice of his/her automatic resignation, he/she must request reinstatement in writing from the SPB Appeals Division within 15 days of service of the notice. If the employee does not receive written notice, he/she must file a written appeal for reinstatement with the SPB Appeals Division within 90 days of the effective date of separation. An informal Coleman hearing is available to the CSU employee, similar to AWOL separations of state civil service employees appealed to DPA.

The Board may grant reinstatement only if the CSU employee provides a satisfactory explanation for his/her absence and failure to obtain leave, and indicates that he/she is ready, able, and willing to return to work or has obtained the campus' approval for a leave of absence.

The employee is not entitled to back salary even if reinstated, and bears the burden of proving all three grounds for reinstatement.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse actions.

Action: Petition to Set Aside Resignation

Authority: Education Code section 89542

Filing Deadlines: 30 Days after Last Date Worked/Submitted

A CSU employee may petition to set aside his/her oral or written resignation on the grounds of mistake, fraud, duress, undue influence, or any other reason alleging it was not a free, voluntary and binding act. A petition to set aside the resignation must be filed with the SPB Appeals Division within 30 days from the last day worked or the date of submitting the resignation, whichever is later.

The employee bears the burden of proving that the resignation should be set aside. The same procedures are used as in state civil service employee petitions to set aside resignations appealed to DPA. If the resignation is set aside, the employee is reinstated to his/her former position and paid back salary.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse action.

SECTION V

APPEALS FROM EMPLOYEES
OF COUNTIES WITHOUT APPROVED
MERIT SYSTEMS

Action: Disciplinary Action, Medical Action, Automatic Resignation, Layoff, Refusal to Hire, Rejection during Probation (Limited)

Authority: Government Code sections 19800 - 19810, Title 2, California Code of Regulations sections 17010 - 17592

Filing Deadline: 30 Days after Notice or Date of Action

The SPB administers merit systems and personnel standards for local government agencies where required by statute due to a state-funded program or a federal grant-in-aid program established under federal law.

Cooperative Personnel Services (CPS), an independent entity on whose board the SPB serves, works directly with the counties in administering their merit personnel standards and systems. CPS also operates in conjunction with four state departments (Departments of Health Services, Social Services, Child Support Services and Office of Emergency Services) in administering federal funds to maintain county personnel standards and systems.

The SPB hears and decides appeals from specified actions that are filed by employees working for counties without approved merit systems. These are:

- Involuntary Demotion, Dismissal, and Suspension
- Medical Termination or Transfer
- Automatic Resignation
- Reduction in Pay for Disciplinary Reasons or Other Disciplinary Action that Affects the Employee's Present Status
- Layoff
- Refusal to Hire from a Reemployment List
- Grievances Involving Discrimination or Political Affiliation, if not Resolved Locally
- Rejection During Probation, if Based on Discrimination or Political Affiliation

There are 11 causes for disciplinary action in Title 2, California Code of Regulations, section 17544, governing local agency personnel standards (See "Appendix D"). A county department taking disciplinary action must give the employee written notice at least five working days before its effective date. Prior to the effective date of the action, the employee has the right to respond verbally or in writing regarding the charges in an informal Skelly meeting similar to that conducted in state civil service disciplinary actions.

The county bears the burden of proof in disciplinary and medical actions. The employee bears the burden of proof in the remaining appeals.

The county employee may file an appeal, specifying the facts and relief requested with the SPB Appeals Division within 30 days¹¹ after notice or from the date of the action.

¹¹ All days are calendar days unless otherwise specified.

SECTION VI

PETITIONS FOR REHEARING

Action: Petition for Rehearing

Authority: Government Code sections 19586 and 19587; SPB rules 51 - 54.2

Filing Deadline: 30 days after Service of Decision

An aggrieved party to an appeal may challenge the Board's written decision by filing a petition for rehearing. The Board will grant a petition for rehearing only if the requesting party shows that due process was denied in the original hearing; new and compelling information now exists that was not available at the time of the original hearing; factual findings were made and/or omitted in error; and/or the decision contains legal errors.

The petition for rehearing must be filed with the SPB Appeals Division within 30 days of service of the SPB decision. If the petition is not timely filed, the decision becomes final. If the petition is timely filed, the opposing party will be asked to file a response. The petition and response will be forwarded to the SPB for review and decision at a bimonthly Board meeting.

The SPB has 60 days to act once it has received the petition and the response. If it does not act within 60 days, the petition will be deemed denied. If the petition is denied, the SPB decision will become final. A petition for rehearing need not be filed to exhaust administrative remedies.

If the petition is granted, the transcript of the hearing (if one was held) will be ordered, and the parties may be afforded an opportunity to purchase the transcript, file written argument, and present oral argument. After reviewing the record and the written and oral arguments of the parties, the Board will issue a new decision. If the SPB grants a petition for rehearing of a precedential decision, that precedential decision will be vacated and will no longer be considered precedential.

SECTION VII

APPENDICES

APPENDIX A

FILING OF APPEALS

APPEAL TYPE	FILE WITH	FILING TIME
<u>State Civil Service - Evidentiary Appeals</u>		
Adverse Action	SPB	30 Days ¹²
Lesser Adverse Action		
Rejection on Probation	SPB	15 Days
Medical Termination, Demotion, or Transfer	SPB	15 Days ¹³
Non-Punitive Termination	SPB	30 Days
Termination of Limited Term / Seasonal / Temporary Authorization Appointments (Name-Clearing Hearing)	SPB	30 Days
LEAP Termination	SPB	30 Days
CEA Termination	SPB	30 Days
Termination / Automatic Resignation of Permanent- Intermittent Employee	SPB	30 Days
<u>State Civil Service - Merit Appeals</u>		
Discrimination/Retaliation Complaint	Department	1 Year
After Department Response	SPB	30 Days
Examination Appeal	SPB	30/60Days ¹⁴
Failure of Pre-Employment Drug Test	SPB	30 Days
Medical/Psychological Screening	SPB	30 Days
Merit Issue Complaint	Department	N/A
After Department Response	SPB	30 Days ¹⁵
Out-of-Class Claim (Examination)	SPB	30 Days
Reasonable Accommodation	Department	N/A
After Department Response	SPB	30 Days ¹⁶
Request to File Charges	SPB	1 Year
Request to Test - Dismissed Employees	SPB	30 Days
Whistleblower Retaliation Complaint	SPB	1 Year ¹⁷
Withhold From Certification	SPB	30 Days
Voided Appointment	SPB	30 Days

¹² From effective date

¹³ From receipt of written notice

¹⁴ 60 days for written test

¹⁵ 30 days after the department denies the complaint or 90 days from the date the complaint filed with the department, if no department decision on the complaint.

¹⁶ 30 days after exhaustion of the department's 20-working-day response period, or after notice of department's denial of reasonable accommodation request.

¹⁷ After most recent act of reprisal/retaliation completing

APPENDIX A (CONTINUED)
FILING OF APPEALS

APPEAL TYPE	FILE WITH	FILING TIME
<u>CSU Appeals</u>		
Automatic Resignation (AWOL)	SPB	15/90Days ¹⁸
Dismissal, Demotion, Suspension, Medical Action	SPB	20 Days ¹⁹
Petition to Set Aside Resignation	SPB	30 Days ²⁰
<u>Counties Without Approved Merit Systems</u>		
Discipline, Medical Action, Automatic Resignation Layoff, Refusal to Hire, Rejection (Limited)	SPB	30 Days ²¹
<u>Petition for Rehearing</u>		
Petition for Rehearing	SPB	30 Days ²²

¹⁸ After service/effective date

¹⁹ After service

²⁰ After last day worked/submitted

²¹ After date or notice of action

²² After service of decision

APPENDIX B

GOVERNMENT CODE SECTION 19572

Government Code Section 19572 states:

"Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

- (a) Fraud in securing appointment
- (b) Incompetency
- (c) Inefficiency
- (d) Inexcusable neglect of duty
- (e) Insubordination
- (f) Dishonesty
- (g) Drunkenness on duty
- (h) Intemperance
- (i) Addiction to the use of controlled substances
- (j) Inexcusable absence without leave
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality
- (m) Discourteous treatment of the public or other employees
- (n) Improper political activity
- (o) Willful disobedience
- (p) Misuse of state property
- (q) Violation of this part or board rule
- (r) Violation of the prohibitions set forth in accordance with Section 19990
- (s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment
- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment
- (u) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled
- (v) The use during duty hours, for training or target practice, of any material that is not authorized therefore by the appointing power
- (w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee
- (x) Unlawful retaliation against any other staff officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto

APPENDIX C

LESSOR ADVERSE ACTIONS SECTIONS 52 AND 52.6

(a) The following shall be assigned to the full evidentiary hearing process:

- (1) Approved requests to file charges under Government Code section 19583.5
- (2) Appeal of adverse action pursuant to Government Code section 19575 by an employee covered by the Ralph C. Dills Act (Ch.10.3) (commencing with Section 3512) Div. 4 Title 1
- (3) Appeal of an adverse action pursuant to Government Code Section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch.10.3) (commencing with Section 3512) Div. 4 Title 1 where the penalty imposed is greater than a suspension without pay for five days or a one-step reduction in pay for four months
- (4) Appeal of rejection during probationary period
- (5) Any other appeal deemed appropriate by the executive officer, the Board or its president

(b) The following shall be assigned to the Investigatory Hearing Process:

Appeal of adverse action pursuant to Government Code section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch.10.3) (commencing with Section 3512) Div. 4 Title 1, where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one-step reduction in pay for four months.

(c) In any case, when a proceeding has been assigned to the administrative law judge evidentiary/investigatory hearing process, the administrative law judge is fully authorized and empowered to grant or refuse extensions of time, to set such proceedings for a full evidentiary hearing or investigatory hearing as provided herein and to conduct a full evidentiary hearing or investigatory hearing in every such proceed as provided herein. The administrative law judge is authorized to conduct a full evidentiary hearing in an appeal defined in subdivision (b) above upon mutual agreement of the parties or, upon motion by one of the parties, if the administrative law judge finds it in the interest of fairness to do so. The administrative law judge is also fully authorized and empowered to perform any and all other acts in connection with such proceedings that may be authorized by law or these regulations.

(d) The assignment of a case under the provisions of (a) and (b) shall not preclude the Board from recalling the proceedings for hearing by the Board.

SEC. 52.6. INVESTIGATORY HEARING PROCESS FOR LESSER ADVERSE ACTIONS.

(a) Failure of any party to proceed at the investigatory hearing shall be deemed a withdrawal of the action or appeal, unless the investigatory hearing is continued for good cause.

(b) One hundred eighty (180) minutes will be calendared for the investigatory hearing. Each party will be allotted a total of ninety (90) minutes to be allocated at that party's discretion for presentation of its case, including examination and cross examination of witnesses, presentation of declarations, documentary evidence, and exhibits, and presentation of arguments. While use of the time allotted is at each party's discretion, the suggested format for the hearing is as follows: 5 minutes each for opening statements, 60 minutes each to call witnesses and present declarations, documentary evidence and exhibits, 15 minutes each for cross examination of the opposing party's witnesses, and 10 minutes each for closing arguments.

(c) The administrative law judge has discretion to ask clarifying questions of the witnesses or the parties at the conclusion of each party's case-in-chief and has sole discretion to extend additional time to each of the parties.

(d) The administrative law judge is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(e) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the administrative law judge to make a finding of fact. Other hearsay is admissible, but cannot be relied upon by the authorized representative to make a finding of fact unless it would be admissible over objection in a civil proceeding or unless corroborated either by witness testimony and/or a declaration or affidavit made under penalty of perjury. The foundation for admitting the declarations/affidavits or other written hearsay may be laid in a declaration/affidavit.

(f) The administrative law judge shall prepare a short-form proposed decision which would be forwarded to the board within 15 calendar days of the investigatory hearing. The decision will include enough information to allow the Board to exercise its constitutional authority to review disciplinary actions, such as (a) introduction; (b) factual allegations sustained and not sustained, referring to the Notice of Adverse Action; (c) legal causes and not sustained referring to the Notice of Adverse Action and any other applicable legal authority; and (e) any finding of fact that the authorized representative decides is necessary to highlight.

(g) Absent Board rejection of proposed decision, each case would be opened and closed in no more than ninety (90) calendar days.

(h) It is the intent of the Board that any finding of fact or law, judgment, conclusion, or final order made by an administrative law judge, pursuant to this process shall not be conclusive or binding in any separate or subsequent action or proceeding, and shall not be used as evidence in any separate or subsequent action or proceeding, between an individual and his or per present or prior employer brought before an arbitrator, court or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts. Any decision rendered pursuant to subdivision (f) above may be cited for purposes of providing progressive discipline.

NOTE: Authority cited: Section 18701, Government Code

Reference: Sections 18671, 18675, 19570, 19756, and 19582, Government Code.

APPENDIX D

EDUCATION CODE SECTION 89535

Education Code Section 89535 states:

Any permanent or probationary employee may be dismissed, demoted, or suspended for the following causes:

- (a) Immoral conduct
- (b) Unprofessional conduct
- (c) Dishonesty
- (d) Incompetency
- (e) Addiction to the use of controlled substances
- (f) Failure or refusal to perform the normal and reasonable duties of the position
- (g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude
- (h) Fraud in securing appointment
- (i) Drunkenness on duty

APPENDIX E

TITLE 2, CALIFORNIA CODE OF REGULATIONS SECTION 17543

Title 2, Section 17543 states:

"The action of an employee which reflects discredit upon a public service, or is a hindrance to the effective performance of the department in which the employee is employed shall be considered good cause for discipline. Such actions are:

- (a) Incompetency
- (b) Inefficiency
- (c) Neglect of duty
- (d) Insubordination
- (e) Absence without leave
- (f) Conviction of a felony
- (g) Discourteous treatment of the public or other employees
- (h) Improper political activity
- (i) Willful disobedience
- (j) Willful concealment or misrepresentation of material facts in applying for or securing employment
- (k) Other conduct either during or outside of duty hours which causes discredit to the agency or the employment."

APPENDIX F

GOVERNMENT CODE SECTION 18935

Government Code Section 18935 states:

"The board may refuse to examine or, after examination, may refuse to declare as an eligible or may withhold or withdraw from certification, prior to appointment, anyone who comes under any of the following categories:

- (a) Lacks any of the requirements established by the board for the examination or position for which he or she applies.
- (b) At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he or she applies.
- (c) Is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment.
- (d) Is addicted to the use of intoxicating beverages to excess.
- (e) Is addicted to the use of controlled substances.
- (f) Has been convicted of a felony, convicted of a misdemeanor involving moral turpitude.
- (g) Has been guilty of infamous or notoriously disgraceful conduct.
- (h) Has been dismissed from any position for any cause that would be a cause for dismissal from the state service.
- (i) Has resigned from any position not in good standing or in order to avoid dismissal.
- (j) Has intentionally attempted to practice any deception or fraud in his or her application, in his or her examination or in securing his or her eligibility.
- (k) Has waived appointment three times after certification from the same employment list.
- (l) Has failed to reply within a reasonable time, as specified by the board, to communications concerning his or her availability for employment.
- (m) Has made himself or herself unavailable for employment by requesting that his or her name be withheld from certification.
- (n) Is, in accordance with board rule, found to be unsuited or not qualified for employment."

APPENDIX G

STATE PERSONNEL BOARD RULE 211

State Personnel Board Rule 211 states:

"If an employee is dismissed from State employment by adverse action or as a result of disciplinary proceedings, that employee shall not thereafter be permitted to take any state civil service examination or be certified to any position in the state service without the consent of the executive officer. If such an employee subsequently attains permanent status in the state civil service, the executive officer may grant a continuing waiver of this requirement that may apply to all subsequent examinations for which that employee applies or to those for specific occupations. In all other cases, the executive officer shall determine whether to refuse to examine, or after examination, to declare or certify as eligible anyone for any of the reasons set forth in section 18935 or the act.

Persons denied permission to compete or be certified under this section may appeal in writing to the Board within 30 days of notification."

APPENDIX H

STATE PERSONNEL BOARD RULE 212

(a) **Definition** -Out-of-class experience is that work experience gained by the performance of duties outside the class concept of the employee's class of appointment.

Nothing in this part shall be deemed to condone or encourage the assignment by management or the performance of out-of-class work by an employee not authorized by law.

(b) **Verification of out-of-class experience.** An employee shall be eligible to receive credit for out-of-class experience in meeting the minimum qualifications for a civil service examination:

(1) When all of the following criteria are met:

(A) The employee shall submit a written request that the appointing authority, or his/her designee, certify that the employee accepted and performed duties assigned by the appointing authority that were not consistent with the employee's class of appointment. Requests shall not be made prior to performing out-of-class duties a minimum of 30 consecutive calendar days, nor later than one year after the ending date of the out-of-class duties.

(B) The appointing authority or his/her designee under whom the claimed out- of-class experience was gained shall document by a written statement the employee's request for certification of out-of-class experience. The department's statement shall include a description of the type and level of duties performed; a conclusion regarding whether the duties are or are not consistent with the employee's class of appointment and, if not consistent, an identification of the class to which such duties are appropriate; the beginning and ending dates of the out-of-class experience; the title of the examination for which the employee is applying, if applicable; and any further information required by the executive officer.

(C) The applicant shall attach a copy of the verification statement to the application form for any examination for which he/she is applying.

(D) The out-of-class experience shall not be used to progress from the trainee to the journey level in a class series or deep class at a rate faster than that permitted for persons appointed to such classes. If the employee's class of appointment has a transfer relationship, as defined by Section 433, to the class series or deep class in which out-of-class was gained and verified, and the out-of-class experience gained was at the trainee through journey level, the experience shall be credited for examination purposes on a cumulative basis starting at the level to which the employee could have transferred. Where a promotional relationship, as defined in section (b) of Section 431, exists between the employee's class of appointment and the class series or deep class in which out-of-class experience is claimed and verified, the experience will be credited on a cumulative basis starting at the entry level of the class series or deep class.

For the purposes of this regulation:

A "**class series**" is any vertically related group of two or more classes in the same occupational specialty or program area but different in level of responsibility, which constitutes a primary promotional pattern for a specifically identifiable group of employees; **and**

A "**deep class**" is a class which has more than one salary range and where, by Board resolution, a salary range other than the lowest range of the class may be used for determining employee status.

(E) The out-of-class duties were performed for a minimum time period generally required

to assume the full range of responsibilities of the class being claimed by the employee. Under this requirement, the minimum verifiable length of out-of-class experience is 30 consecutive calendar days.

- (2) When an out-of-class verification for reimbursement obtained by the employee under Government Code Section 19818.16 indicates that the out-of-class experience is being verified also for the purpose of meeting the minimum qualifications for civil service examinations.
- (c) Once out-of-class experience is credited under this section, such experience may be used for any other examination with a final filing date on or after the effective date of this section, without the need for reverification.
- (e) All verification statements will remain on file with the department for audit purposes for a period not less than five years or until ordered destroyed by the executive officer.
- (e) The employee may appeal to the board from the appointing authority's denial of a request for use of out-of-class experience for meeting minimum qualifications in an examination pursuant to Section 51.2.

Note: Authority cited: Sections 18701 and 19050.8, Government Code.